IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1421 of 2002.

Reserved on: 24.10.2007.

Decided on: 29.10.2007.

H.P. State Coop. Bank Ltd. … … Petitioner.

Versus

State of H.P. & Others. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioner:	**Mr. S.S. Mittal, Sr. Advocate with Mr. Dev Raj Dev, Advocate.**
For Respondents No.1 &2:	**Mr. M.S. Chandel, Advocate General with Ms. Meenakshi Sharma, Deputy Advocate General.**
For Respondent No.3:	**Mr. Tarlok Chauhan, Advocate.**

Rajiv Sharma, Judge:

A challenge has been laid to the order passed by the Under Secretary (Cooperation) to the Government of Himachal Pradesh, dated 15.9.2001 in appeal No.27 of 2000.

The brief facts necessary for the adjudication of this petition are that arbitration proceedings were initiated against respondent No.3 by the petitioner-Bank under Section 72 of the H.P. State Co-operative Societies Act, 1968 (hereinafter referred to as the Act for convenient

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Whether reporters of local papers may be allowed to see the judgment? Yes.

sake) for the recovery of Rs.2,32,022.20 paise stated to have been embezzled by him and interest thereon. The arbitrator passed an award for a sum of Rs.2,16,836.75 paise on 15.2.1978. It appears that thereafter the petitioner-Bank entered into a settlement with respondent No.3 on 14.11.1981 and the execution proceedings instituted against him were withdrawn. Consequently, a simple mortgage deed was executed on 30.4.1982 on the basis of which the respondent No.3 was to pay a sum of Rs.55,000/- by 22.11.1981 and for the balance amount he was to furnish two sureties who were willing to mortgage their properties and to liquidate the loan amount within one year. It was further stipulated in the simple mortgage deed that in case the respondent No.3 or his sureties paid off the balance amount of Rs.79,511.25 paise within a period of six months, the petitioner-Bank would not charge any interest on the said amount and if the amount was not paid within one year, the bank could charge interest at the rate of 17.50% per annum on the balance amount from 14.11.1981 onwards. The respondent No.3 had paid a sum of Rs.55,000/- as per simple mortgage deed dated 30.4.1982. The Bank preferred arbitration proceedings under Section 72 of the Act before the Registrar, Cooperative Societies for the recovery of the remaining amount of Rs.79,511.25 and the Registrar, Cooperative Societies referred the same to the Deputy Registrar, Cooperative societies, who while exercising the powers of the Registrar, Cooperative Societies rejected the claim of the bank and held that as there was already an award passed in arbitration under the provisions of the Act, no further proceedings could be initiated by the Bank for the second time. The Bank feeling aggrieved by the orders of the Deputy Registrar, Cooperative Societies, preferred a revision petition before the Joint Registrar (Dairy), Cooperative Societies, H.P., who opined that the

remedy for the petitioner-Bank was to enforce the simple mortgage by other means and the same could not be enforced by way of Section 72 of the Act. Consequently, the petition filed by the petitioner was rejected by the Joint Registrar (Dairy). The petitioner-Bank feeling aggrieved by the order passed by the Joint Registrar (Dairy) filed CWP bearing No.408 of 1989 before this Court. The writ petition was disposed of by this Court on 23rd July, 1997. The operative portion of the judgment reads thus:-

> **"As the authorities below have taken the view that the claim is not for a fresh reference under Section 72 of the Act, the orders passed by the authorities are set aside and the matter is sent back to the file of Dy. Registrar of Cooperative Societies(Bank) for disposal in accordance with the law. He shall dispose of the matter as a reference under Section 72 of the Act and pass an appropriate award after giving due opportunity to the parties to place their respective cases before him."**

Consequently, the matter was referred to the Registrar, Cooperative Societies, who vide letter dated 28th November, 1997 directed the Deputy Registrar (Audit) to dispose of the matter as remanded by this Court.

The Arbitrator awarded a sum of Rs.3,07,948.16 in favour of the Bank in the following manner:-

a) Rs.79,511.25 p. principal.

b) Rs.2,24,461.35p. interest w.e.f. 14.11.1981 to 31.12.1997 @ of 17.50% p.a. simple interest.

c) Rs.3,975.56 p. as arbitration cost , i.e. @ 5% on principal.

The respondent No.3 feeling aggrieved by the award dated 26.2.2000 preferred an appeal before the Under Secretary (Cooperation) on 12th May, 2000. The Under Secretary (Cooperation) vide order dated 15.9.2001 came to the opinion that the awarding of interest after the

stipulated period on 14th November, 1982 was uncalled for and the respondent No.3 could not be held responsible for the same and consequently, the award was directed to be modified.

Mr. S.S. Mittal, learned Sr. Advocate with Mr. Dev Raj Dev, Advocate had strenuously argued that the order passed by the Under Secretary (Cooperation) dated 15.9.2001 is not sustainable in the eyes of law. He further contended that the appellate authority had no jurisdiction to reduce the interest as directed. The learned Advocate General appearing on behalf of respondents No.1 and 2 and Mr. Tarlok Chauhan, Advocate appearing on behalf of respondent No.3 had supported the order dated 15.9.2001 passed by the Under Secretary (Cooperation).

I have heard the learned counsel for the parties and perused the record carefully.

The case has a chequered history. The award was passed in favour of the Bank by the Arbitrator for a sum of Rs.2,16,836.75 paise on 15.2.1978 and thereafter the matter was settled during the execution proceedings whereby the respondent No.3 had agreed to pay a sum of Rs.55,000/-. The Bank on the failure of respondent No.3 to pay the agreed amount preferred arbitration proceedings before the competent authority. The Deputy Registrar, Cooperative Societies refused to adjudicate upon the award on the ground that the second proceedings for arbitration could not be initiated once the award had already been passed on 15.2.1978. The Joint Registrar in his order has held that the remedy by the Bank was to enforce the mortgage deed before the competent court of jurisdiction and not under Section 72 of the Act. It was only after the intervention of this Court that the arbitration proceedings were initiated by the Assistant Registrar, Cooperative Societies which culminated in the award dated 26.2.2000.

The respondent No.3 has as per the simple mortgage deed paid a sum of Rs.55,000/-, but the balance amount of Rs.79,511.25 was not paid. The Arbitrator in his award dated 26.2.2000 had directed the respondent No.3 to pay a sum of Rs.2,24,461.35 as interest with effect from 14.11.1981 to 31.12.1997 at the rate of 17.50% per annum simple interest besides the cost of Rs.3,975.56. The respondent No.3 had agreed to pay a sum of Rs.79,511.25 plus interest with effect from 14.11.1981 to 14.11.1982 at the rate of 17.50% per annum simple interest as per agreement dated 14.11.1981. The appellate authority after taking into consideration the agreement and simple mortgage deed had come to just conclusion that no interest was payable after 14.11.1982.

The matter can be viewed from another angle. The principle amount which has been claimed by way of arbitration was Rs.79,511.25 paise. The Arbitrator had calculated interest with effect from 14.11.1981 to 31.12.1997 at Rs.2,24,461.35 which is almost three times the principle amount.

Mr. Tarlok Chauhan by invoking equitable principle based on Damdupat had argued that the interest component could not increase double the amount of the principal amount. In ***Bapurao and another v. Anant Kashinath and others, AIR 1946, Nagpur, 210*** the Division Bench has held that the rule of Damdupat is one of equity and of good sense. Their Lordships have held as under:-

> **"… The question for decision is whether a civil Court has power to award interest on the amount due under the mortgage from the date of the suit till the date of the decree at the contract rate either under S.34 of R.11 of O.34, Civil P.C., notwithstanding that the limit imposed by the rule of damdupat for the recovery of interest had been reached before the institution of the suit.**

The existence of such a power has been affirmed in A.I.R. 1924 Nag. 348 by Kinkhede A.J.C. and in A.I.R. 1929 Nag. 355 by Jackson A.J.C. and it has been denied in A.I.R. 1929 Nag. 117 and in A.I.R. 1931 Nag. 88 by Macnair A.J.C. and in 27 N.L.R. 312 by a Bench of Macnair J.C. and Subhedar A.J.C. We have to decide which of the two views is correct. The debtor and the creditors are Hindu and are residents of Berar. The property mortgaged is situate there. The rule of damdupat applies to Berar: A.I.R. 1917 Nag. 116 and 10 N.L.R. 91. This has not been disputed by the parties before us. The rule of damdupat is a branch of the Hindu law of Debts. The rule is stated by Gautama in these words:

> **"If (the loan) remains outstanding for a long time, the principal may be doubled (after which interest ceases)." Sacred Books of the East, Vol. II, Chap XII, 31, page 242.**

In Manu the rule is stated thus:

> **"In money transactions interest paid at one time (not by instalments) shall never exceed the double (of the principal) . . . ." Laws of Manu, Chap. VIII, 51, page 280.**

The other text have been collected in Colebrooke's Diggest, in Mandlik's translation of Mayukha and in Ganganath Jha's Hindu Law in its Sources, Chap. V, vol. I. Some of these texts have been cited in 1 Bom. H.C.R. 47, 3 Bom. H.C.R. A.C.J. 25 at p. 26, 12 W.R.O.C. 9 and 10 N.L.R. 91. According to the rule of damdupat the amount of interest recoverable at any one time cannot exceed the principal: 1 Bom. H.C.R. 47, 14 Cal. 781 at p.789. The reason of the rule has been stated by Kanhaiyalal J. in his judgment in 46 ALL. 775 at p.782 in these words:

> **"The Hindu law did not recognise any rule of limitation for the recovery of debts. Every debt which was lawful was binding and recoverable from the**

debtor irrespective of the period which may have elapsed since the original liability was incurred, and no restriction on its recovery was recognized beyond this that at no time more than double the amount of the principal money could be claimed."

The rule is one of equity, and according to 40 Cal. 710 at p.713 one of good sense. This statutory rule has been embodied in several Acts for the relief of debtors by the Indian Legislature: The Deccan Agriculturists' Relief Act, 1879, S. 13 (g), C.P. and Berar Money-lenders Act, 1934, SS. 9 and 10, Bengal Money-lenders Act, S.30 and the Sonthal Parganas Settlement Regulation 3 [III] of 1872, S.6, may be mentioned by way of illustration. The rule of damdupat is not affected by the Usury Laws Repeal Act, 1855. According to that Act the Court is bound to award interest at the contract rate, whatever the rate of interest may be. There are certain exceptions to the rule which need not be stated as they are not necessary for the decision of this case. But in cases to which the rule of damdupat applies, the creditor cannot at any one time recover interest in excess of the amount of the principal: 3 Bom H.C.R. A.C.J. 23, 7 Bom. H.C.R. O.C. 19, 3 Bom. 312 at p. 338, 12 W.R. O.C. 9 and 5 Cal. 867. Under S.37, Contract Act, the parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of this Act or of any other law. The rule of damdupat is one such law and S.37 of the Act does not affect the operation of the rule. This is recognised in 26 Md. 662 at p. 670."

Their Lordships of the Hon'ble Supreme Court have considered the applicability of the rule of Damdupat to a mortgage transaction in ***Mhadagonda Ramgonda Patil and Others versus Shripal Balwant Rainade and Others, (1988) 3 SCC 298.*** Their Lordships have held as under:-

"We may now consider the second question as to whether the rule of Damdupat is applicable to a mortgage transaction. Admittedly, it is an equitable rule debarring the creditor to recover at any given time the amount of interest which is in excess of the principal amount due at that time. It is urged by the learned counsel appearing on behalf of the appellants that the rule is applicable only to a simple loan transaction and not to a transaction of mortgage. We are unable to appreciate this contention. In every mortgage there are two aspects, namely, (1) loan and (2) transfer of interest in immovable property. As mortgage is principally a loan transaction, we do not find any reason why the rule of Damdupat which is an equitable rule should not apply also to mortgage.

It has, however, been held in *Madhwa Sidhanta Onahini Nidhi v. Venkataramanjulu Naidu* that the rule of Damdupat is inapplicable to cases of mortgage governed by the Transfer of Property Act. The principal reason for the decision is that in Section 2 of the Transfer of Property Act, before it was amended by the Amending Act 20 of 1929, it was provided "and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu law". It was inferred that as the rules of Hindu law were saved only with regard to transfer of property as contained in the second chapter, it was not saved with regard to the mortgages of immovable property and charges as contained in Chapter IV of the Transfer of Property Act.

A contrary view was expressed by the Bombay High Court in *Jeewanbai v. Monordas Lachmondas.* In that case, it has been held that it is not proper to infer that because it has been expressly enacted that nothing in Chapter II of the Transfer of Property Act shall be deemed to affect any rule of Hindu law, the legislature has deprived a Hindu mortgagor of the protection afforded to him by the rule of Damdupat.

The Calcutta High Court in *Kunja Lal Banerji v. Narsamba Debi* has refused to follow the decision in *Madhwa*

Sidhanta case, **clearly pointing out that in that High Court the uniform rule has been to disallow as between Hindus' interest larger than the amount of principal in making up a mortgage account.**

In *Bapurao v. Anant Kashinath* a Division Bench of the Nagpur High Court has held that the rule of Damdupat is applicable to a mortgage, and that it does not in any way affect the provisions of the Transfer of Property Act inasmuch as it merely prevents recovery of interest on the loan in excess of the principal.

Admittedly, the rule of Damdupat was never applicable to Madras. It has been already noticed that in *Madhwa Sidhanta case* the principal reason to hold that the rule was inapplicable to mortgages governed by the Transfer of Property Act was that in view of Section 2 of the Transfer of Property Act, before it was amended by Act 20 of 1929, the rules of Hindu law were not saved with regard to mortgages of immovable properties and charges as contained in Chapter IV of the Act. By the Amending Act 20 of 1929, Section 2 has been amended and after such amendment it reads "and nothing in the second chapter of this Act shall be deemed to affect any rule of Muhammadan law". The inference that was drawn in *Madhwa Sidhanta case* from the provision of Section 2 about the non-applicability of the rules of Hindu law including the rule of Damdupat to mortgages cannot now be drawn from the amended provision with regard to any rule of Hindu law. Moreover, we are of the view that the law was not correctly laid down in *Madhwa Sidhanta case* and the Calcutta, Bombay and Nagpur High Courts have rightly held in the decisions mentioned above that the rule of Damdupat is applicable to mortgages. No other point has been urged on behalf of the appellants."

Consequently, on the basis of the language employed in the agreement which was produced before this Court during the course of hearing and as per law discussed hereinabove, the appellate order is

required to be up-held. The petitioner-Bank is only held entitled to a sum of Rs.1,00,000/- since the respondent is required to pay interest from 14.11.1981 to 14.11.1982 only on the principal amount of Rs.79,511.25 paise.

Accordingly, the writ petition is disposed of with a direction that the respondent No.3 will pay a sum of rupees one lakh to the petitioner-Bank within three months from today. No order as to costs.

(Rajiv Sharma), Judge

October 29, 2007.
(sck).